IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 13340 of 2005

Between:

Prem Kishan Pershad, S/o.Hari Kishan Pershad,
R/o H.No.1-35-462/2, Rasoolpura, Secunnderabad,
Hyderabad district.

..... PETITIONER

AND

The District Registrar, Hyderabad district, Office at Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any appropriate writ order or direction declaring the action of the respondent in not accepting the application of the petitioner to open the seal cover of the will of late Champa Devi under registration number S.C.No.15/1970 dt.15-5-1970, illegal, arbitrary and violative of Constitution of India and principles of natural justice and consequently direct the respondent may be directed to receive the application of the petitioner dt.15-6-2005 to open the seal cover of the will of late Champa Devi under registration number S.C.No.15/1970 dt.15-5-1970 and to comply with the requirement and proceedings under Sec.45 of the Registration Act 1908 in the interest of justice.

Counsel for the Petitioner:MR.MOHD. GHULAM HUSSAIN

Counsel for the Respondent : GP FOR REVENUE

The Court made the following :

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for

Revenue and with their consent the writ petition is disposed of at the stage of admission.

The grievance of the petitioner in this writ petition is that the Will which was kept in a sealed cover with the respondent herein is not being opened and that the efforts made by the petitioner to submit a representation is not being entertained and is refused by the respondent.

Reference is made by the learned counsel for the petitioner to Section 45 of the Registration Act, 1908 (for short 'the Act'), which reads as under:

> **Section 45: Proceedings on death of testators:**
>
> (1) If, on the death of a testator who has deposited a sealed cover under Section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and at the applicant's expense, cause the contents thereof to be copied into his book No.3.
>
> 2. When such copy being made, the Registrar shall redeposit the original Will.

Section 45 (1) of the Act contemplates that the Registrar after arriving at the satisfaction that the testator is dead can open the sealed cover deposited under Section 42 in the presence of the applicant and at the applicant's expense and cause contents thereof to be copied in book No.3. Section 45 (2) requires the Registrar, on such copy being made, to redeposit the original Will. The petitioner merely seeks compliance of Section 45 of the Act by the respondent.

Hence, the writ petition is disposed of directing the respondent to entertain the application filed by the petitioner and take action in accordance with Section 45 of the Act, within a period of two weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

22.06.2005

Note: Furnish copy by 28.06.2005.

(B/o.)

TS

To

1. The District Registrar, Hyderabad district, Office at Hyderabad.

2. Two C.Cs to the G.P., for Home, High Court Buildings, Hyderabad(OUT).

3. 2 CD copies